IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO.457 (MS) OF 2006

State of Uttaranchal, through Collector, Pauri Garhwal.

.....Petitioner.

Versus

1. Shri Hari Prasad, S/o Sri Chiranji Lal, R/o Village Jaunk Tehsil Kotdwar District Pauri Garhwal.
2. Prescribed Authority (Eviction)/Up Ziladhikari, Kotdwar, District Pauri Garhwal.
3. District Judge, Pauri Garhwal.
4. Bharat Sadhu Samaj, through its Manager (substituted).
5. Swami Sukhdevanand Trust Parmarth Niketan Swargasharam, through its Managing Trustee all the residents of Villages Jonk, Swargasharam, Patti Udaipur, Talla-1, Tehsil-Kotdwar, District Pauri Garhwal.

.....Respondents.

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WRIT PETITION NO.459 (MS) OF 2006

State of Uttaranchal, through Collector, Pauri Garhwal.

.....Petitioner.

Versus

1. Smt. Shanti Paliwal, W/o Sri Madho Prasad, R/o Village Jaunk Tehsil Kotdwar District Pauri Garhwal.
2. Prescribed Authority (Eviction)/Up Ziladhikari, Kotdwar District Pauri Garhwal.
3. District Judge, Pauri Garhwal.

4. Bharat Sadhu Samaj, though its Manager (substituted).
5. Swami Sukhdevanand Trust Parmarth Niketan Swargasharam, through its Managing Trustee all the residents of Village Jonk, Swargasharam, Patti Udaipur, Tallla-1, Tehsil-kotdwar, District Pauri Garhwal.

.....Respondents.

WRIT PETITION NO.460 (MS) OF 2006

State of Uttaranchal, through Collector, Pauri Garhwal.

.....Petitioner.

Versus

1. Shri Veer Singh, S/o Sri Indra Singh, R/o Village Jaunk Tehsil Kotdwar District Pauri Garhwal.
2. Prescribed Authority (Eviction)/Up Ziladhikari, Kotdwar District Pauri Garhwal.
3. District Judge, Pauri Garhwal.
4. Bharat Sadhu Samaj, its Manager (substituted).
5. Swami Sukhdevanand Trust Parmarth Niketan Swargasharam, through its Managing Trustee all the residents of Village Jonk, Swargasharam, Patti Udaipr, Talla-1, Tehsil-Kotdwar, District Pauri Garhwal.

.....Respondents.

&

WRIT PETITION NO.461 (MS) OF 2006

State of Uttaranchal, through Collector, Pauri Garhwal.

.....Petitioner.

Versus

1. Shri Vijay Kumar Chopra, S/o Sri Banarsi Das, R/o Village Jaunk Tehsil Kotdwar District Pauri Garhwal.
2. Prescribed Authority (Eviction)/Up Ziladhikari, Kotdwar District Pauri Garhwal.
3. District Judge, Pauri Garhwal.
4. Bharat Sadhu Samaj, though its Manager (substituted).
5. Swami Sukhdevanand Trust Parmarth Niketan Swargasharam, through its Managing Trustee all the residents of Village Jonk, Swargasharam, Patti Udaipur, Tallla-1, Tehsil-kotdwar, District Pauri Garhwal.

.....Respondents.

&

WRIT PETITION NO.462 (MS) OF 2006

State of Uttaranchal, through Collector, Pauri Garhwal.

.....Petitioner.

Versus

1. Shri Shambhu Nath, S/o Sri Moti Lal, R/o Village Jaunk Tehsil Kotdwar District Pauri Garhwal.
2. Prescribed Authority (Eviction)/Up Ziladhikari, Kotdwar District Pauri Garhwal.
3. District Judge, Pauri Garhwal.
4. Bharat Sadhu Samaj, through its Manager (substituted).
5. Swami Sukhdevanand Trust Parmarth Niketan Swargasharam, through its Managing Trustee all the residents of Village Jonk, Swargasharam, Patti Udaipur, Tallla-1, Tehsil-kotdwar, District Pauri Garhwal.

.....Respondents.

Dated: 18.05.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Nand Prasad, advocate for the petitioner and Standing Counsel for the respondents no.2 and 3.

By the present writ petitions, the petitioner has prayed for a writ of certiorari quashing the order dated 16th February, 2005 (Annexure No. 13 to the writ petitions) passed by the respondent no. 3 i.e. District Judge, Pauri Garhwal No. and to restore the order dated 18.11.2002 (Annexure No. 19 to the writ petitions) passed by the respondent no. 2.

A perusal of the appellate order shows that the appeal has been allowed only on the ground that the proceeding for cancellation of the lease deed is pending in appeal before the Commissioner, Garhwal Mandal, Pauri.

Briefly stated, the proceedings under Section 4/5 of the U.P. Public Premises (Eviction of Unauthorized Occupants) Act, were initiated on the basis of Challani report of the Patwari Pauri stating therein that the respondents are unauthorized occupants and are liable to be evicted in the aforesaid proceedings. As will appear from the report that Halka Patwari went to the spot and he found the illegal possession of the respondents over the land in question and accordingly prepared a map, extract of Khasra and Khatauni at the spot.

According to the petitioner, the land has been recorded in the name of the U.P. Government now the State of Uttaranchal. On the basis of the aforesaid Challani report, a notice was issued U/s 4(1) of the U.P. Public Premises (Eviction of Unauthorized Occupants) Act requiring the respondents to show case with regard to the unauthorized occupation. The occupant has filed the reply denying that fact, he is in illegal occupation. The Prescribed Authority has

Passed the order that on 11.08.1950 by observing that the lease was granted in favour of the Geeta Bhawan and the Geeta Bhawan having violated the terms and conditions and thereafter on 21.09.1988, the lease in favour of the Bharat Sadhu Samaj was cancelled and the same has vested with the State Government. Following order was passed in the case of Smt. Shanti Devi by the prescribed authority:-

"उपर्युक्त विवेचन से स्पष्ट होता है कि ग्राम जौंक पट्टी उदयपुर तल्ला तहसील कोटद्वार, जिला पौड़ी के खेत नं0 63 मध्ये प्रप्नगत भूमि जिसका रकवा 4X8=32 वर्ग मीटर उ0प्र0 सरकार के नाम पर बगड़ दर्ज है, पर प्रतिवादी संख्या–2 भारत साधू समाज के गीता भवन उन्हे लीज पर स्वीकृत भूमि को अवैधानिक रूप से 1960 में प्राप्त कर उस भवन/दुकान का निर्माण कर कब्जा किया हुआ है। प्रतिवादी संख्या–2 द्वारा दुकान प्रतिवादी संख्या–1 दुकानदार को किराये पर दी गई है दुकान पर दुकानदार भारत साधु समाज के किरायेदार के रूप में काबिज हैं। प्रतिवादी संख्या–3 सुखदेवानन्द टेस्ट परमार्थ निकेतन का प्रप्नगत भवन/दुकान पर प्रत्यक्ष अथवा परोक्ष कब्जा नहीं पाया गया।

आदेप्र

उपर्युक्त विवेचना के आधार पर अवैध अध्यासी संख्या–1 श्रीमती शान्ती देवी पालीवाल पत्नि माधी प्रसाद निवासी जौंक स्वर्गाश्रम, पट्टी उदयपुर तल्ला तहसील कोटद्वार जो प्रप्नगत दुकान पर किरायेदार के रूप में दुकान पर काबिज हंक्र प्रतिवादी संख्या–2 भारत साधु समाज द्वारा प्रबन्धक जो प्रप्नगत भवन/दुकान के स्वामी है तथा अवैध अध्यासी संख्या–3, सुखदेवानन्द टेस्ट परमार्थ निकेतन द्वारा मैनेजिंग टेस्टी प्रप्नगत भवन/दुकान में जो भी हित निहित है को इस न्यायालय द्वारा सावर्जजनिक भूगृहादि अधिनियम –1972 की धारा– 4(1)क्रके तहत क्रमप्रः दिनांक 2. 11.98, 26.08.2000 एवं दिनांक 27.01.2001 को जारी नोटिसों को अन्तिम किया जाता है। तथा उन्हें ग्राम जौक स्वर्गाश्रम पट्टी

उदयपुर तल्ला के खसरा नम्बर –63 की 3. 50X7=24.50 वर्ग मीटर भूमि से बेदखल किया जाता है।

तद्नुसार प्रपत्र–ख जारी हो बाद आवश्यक कार्यवाही के पत्रावली अभिलेखागार में संचित हो ।"

Three separate appeals were preferred by the respondents no. 1, State and respondent no.4 against the petitioner.

The appeals were allowed with the observation that the Commissioner Garhwal Mandal has already stayed the order passed by the District Magistrate cancelling the lease.

In view of the aforesaid, the matter is sent back to the District Judge for deciding the appeals afresh after awaiting the result of the proceedings with reared to the cancellation of the lease.

The eviction appeals shall also be disposed of by the District Judge accordingly after disposal of all the appeals pending before the Commissioner.

Subject to the aforesaid, writ petitions are disposed of. No order as to costs.

(Rajesh Tandon, J.)

18.05.2006
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